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IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE

ONTARIO
MINISTRY OF LABOUR

NOV 13 1981

AND

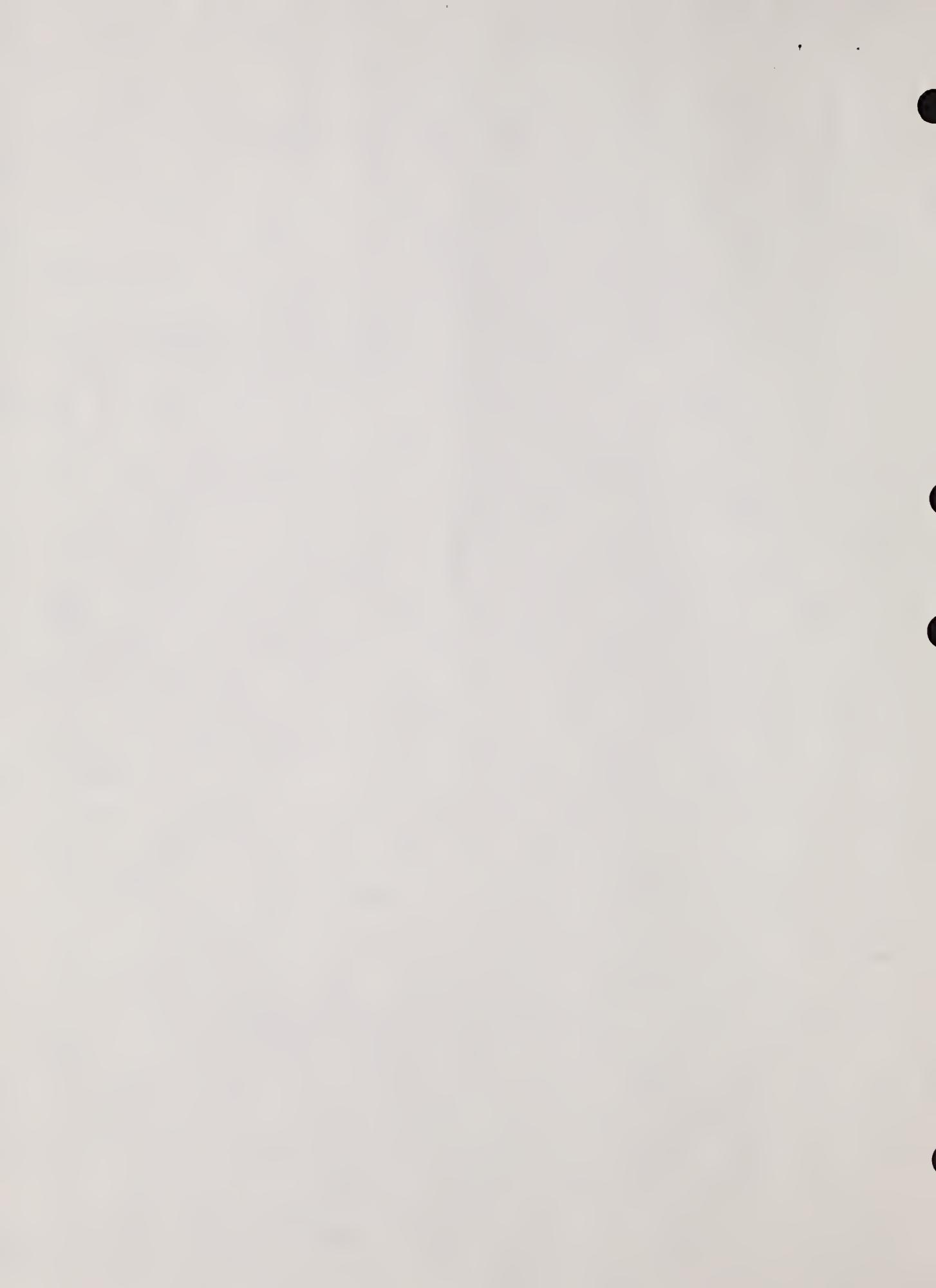
HUMAN RIGHTS
COMMISSION

IN THE MATTER OF THE COMPLAINT OF MRS. PAMELIA
JEFFERS OF TORONTO ALLEGING DISCRIMINATION IN
HOUSING ACCOMMODATION BY GREENBROOK MANOR LIMITED
AND MR. WALTER KOSTIAUK, ALSO OF TORONTO.

DECISION

NOVEMBER 6, 1981

E.J. RATUSHNY
BOARD OF INQUIRY

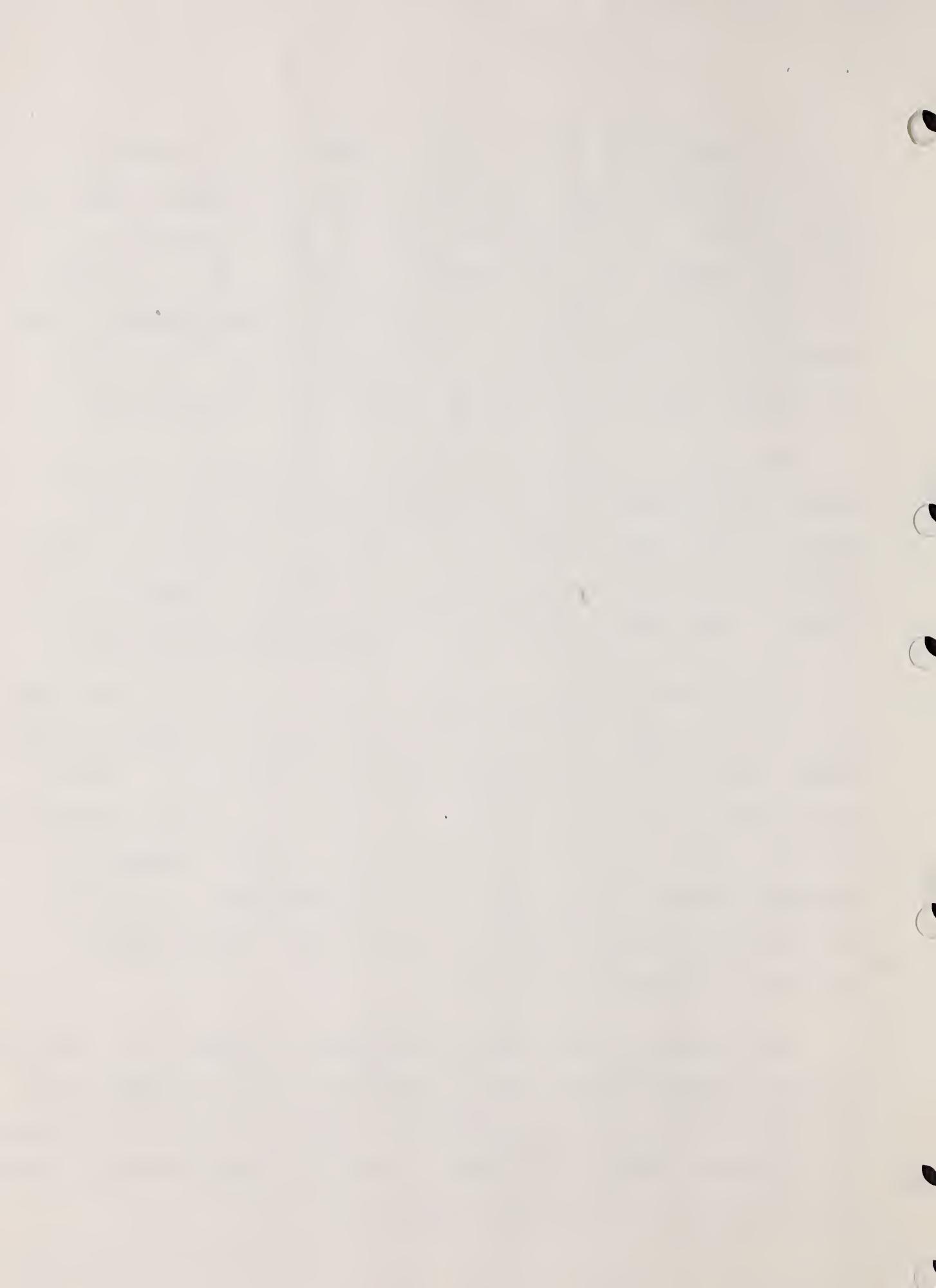


The Complainant, Mrs. Pamelia Jeffers, and her husband, Mr. Livingstone Jeffers, are tenants of the Respondent, Greenbrook Manor Limited. The second Respondent, Mr. Walter Kostiauk, is the superintendent of the building in question. He is assisted in carrying out his duties by his wife, Mrs. Irene Kostiauk. The complaint alleges contravention of sections 3(1)(a) and (b) of the Ontario Human Rights Code on the basis of race and colour.

The hearing in this matter revealed the sad story of an on-going feud between the Jeffers and the Kostiauks which led to landlord and tenant proceedings in the civil courts, six criminal charges against the Jeffers (resulting in three convictions) and, finally, these proceedings under the Ontario Human Rights Code.

There was no significant evidence to indicate that the management of Greenbrook Manor Limited actively engaged in discriminatory practices of the kind alleged in this complaint and Mrs. Jeffers was careful, in cross-examination, to indicate that her allegations were directed against Mr. and Mrs. Kostiauk rather than against Greenbrook Manor Limited. Thus, any contravention on the part of the Respondent company would have to be found in the vicarious acts of its agent, Mr. Kostiauk.

The evidence in this case is difficult to assess. It reflects inadequate preparation on both sides both in its presentation and its exploration in cross-examination. Testimony was often presented in the form of vague allegations and hearsay laced with exaggeration and what could only have been blatant lies.

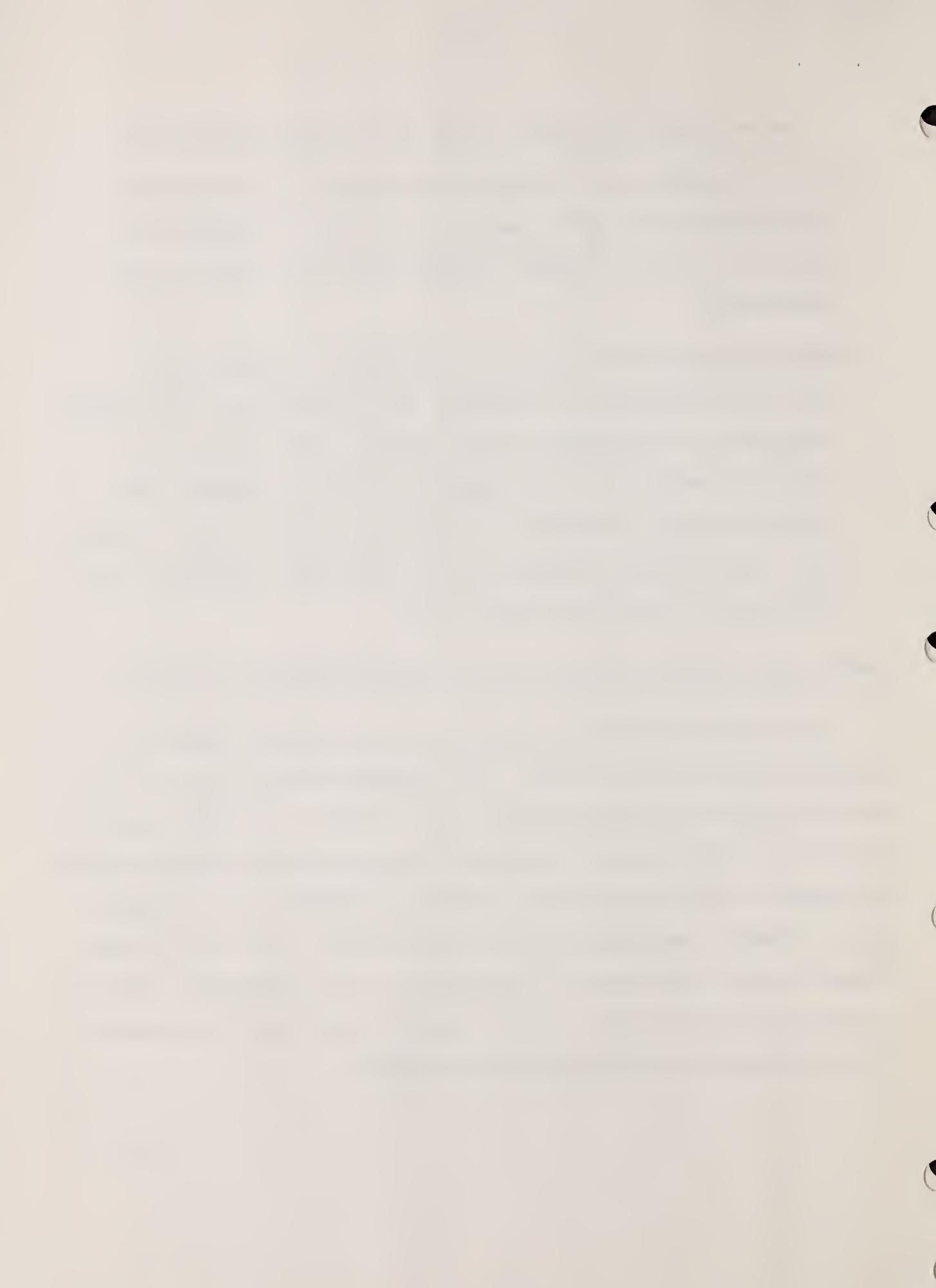


The evidence can be dealt with on two separate planes:

- (1) The allegation of a pattern of harassment of the Jeffers illustrated by a whole series of incidents involving one or both of them or their children and one or both of the Kostiauks;
- (2) The allegation of a plan to eliminate all black tenants from the apartments in question as reflected by: the alleged incidents of harassment of the Jeffers and others; the alleged practice of not accepting new black tenants; the alleged actual reduction in the proportion of black tenants, and; the alleged statements of Mr. Kostiauk expressing the intention to carry out such a plan.

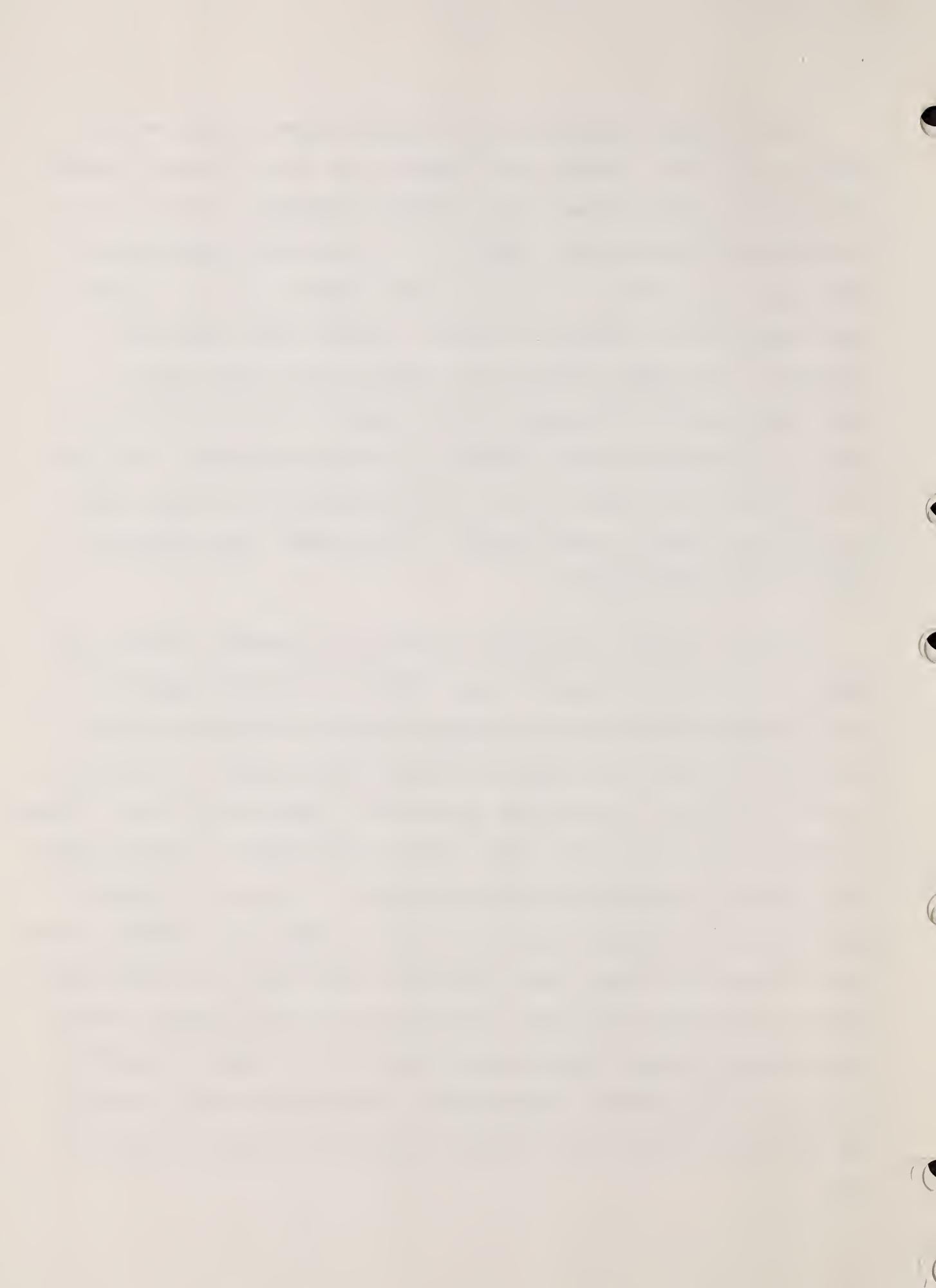
Before dealing with these issues, some background is necessary.

The Jeffers had been tenants in the apartment complex in question since April of 1978. They experienced no difficulties with the previous superintendent and, indeed, tolerated procrastination in the making of repairs because of that superintendent's ill health and because of the drinking problems of her husband. Mrs. Jeffers' description of her relationship with the previous superintendent provides an indication of her subsequent relationship with the Kostiauks. In her words, there was "...no war or nothing between superintendent and tenants".



Mrs. Jeffers suggested that problems arose as soon as Mr. Kostiauk took over through his frequent use of the terms "monkey" and "nigger" when addressing the Jeffers children and, directly, in conversations with Mrs. Jeffers. Mr. Kostiauk flatly denied ever using such words. If Mr. Kostiauk were as loose in using these terms as Mrs. Jeffers suggests, surely they would have surfaced in the many conversations which he had with the non-black tenants, Mrs. Phillips and Mrs. Todd. Yet neither of them made any reference to such language in their testimony. Nor did Mr. Jeffers, Mrs. Peters or Mrs. Findlayter claim to have heard Mr. Kostiauk speak in this manner. On balance, this allegation has not been established.

Perhaps the most impressive witness was another tenant, Mrs. Peters. She was on friendly terms with Mr. Kostiauk during the early stages of his tenure as superintendent but soon detected an insensitivity on his part in dealing with tenants. According to her testimony, the friction between Mr. Kostiauk and Mrs. Jeffers "really started" when the latter became vocal about a strong smell which began to emanate from her building. In spite of numerous entreaties, Mr. Kostiauk took no steps to remedy the problem, which was of a serious nature and, admittedly, difficult to isolate and resolve. His lack of action and apparent lack of concern led to the tenants banding together and, in the end, being successful in having the necessary repairs done. According to Mrs. Peters, she and Mrs. Jeffers were the most vocal on the part of the tenants.

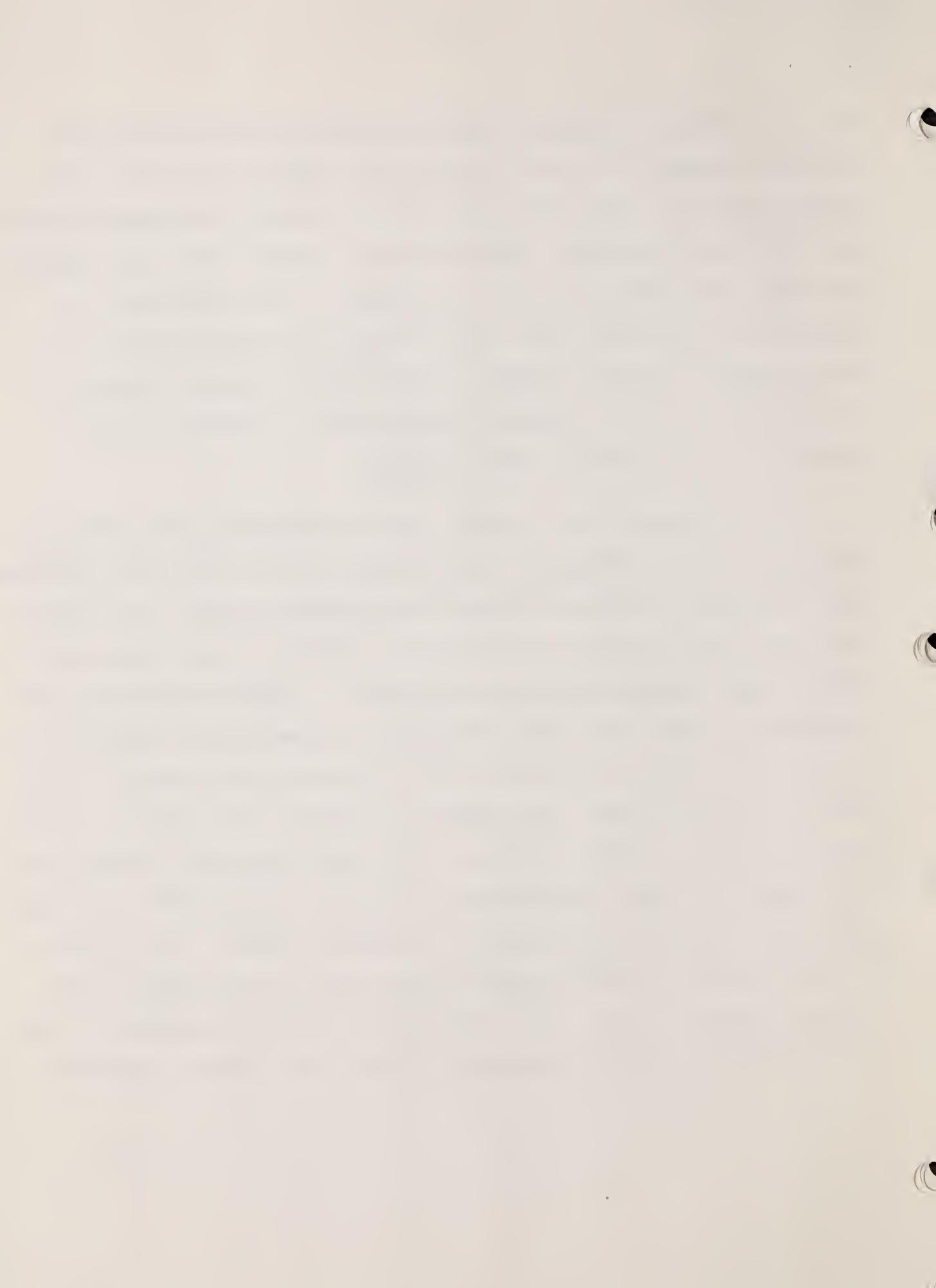


Mrs. Peters suggested that she also had been intimidated and harassed. However, although she is black, she related her treatment entirely to her involvement in the tenant association and the fact that she has been a person "who has spoken out".

Once the adverse relationship between the Kostiauks and the Jeffers was established, it deteriorated rapidly. A series of incidents followed which ranged in nature from petty to extremely serious. The great difficulty is in assessing whether these incidents were merely the manifestations of the relationship between a strict and insensitive landlord and a suspicious and aggressive tenant or whether they amounted to discrimination as to the terms or conditions of occupancy based on race or colour.

Mrs. Jeffers claimed that when she had withheld her rent (as a protest against the "smell" problem) she was taken to court whereas white persons who withheld rent were not sued. However, the evidence clearly establishes that only one other tenant, Debbie Todd, was in arrears at the time. According to Mr. Kostiauk's testimony she had told him that she was awaiting her welfare payment cheque. In fact, she was evicted for non-payment of rent shortly after Mrs. Jeffers' court appearance. Nothing in these circumstances indicates racial discrimination in the treatment of the Complainant.

At one stage, Mr. Kostiauk was instructed by the officers of Greenbrook Manor Limited that since the Jeffers were late in paying their rent, their cheques would have to be certified. This



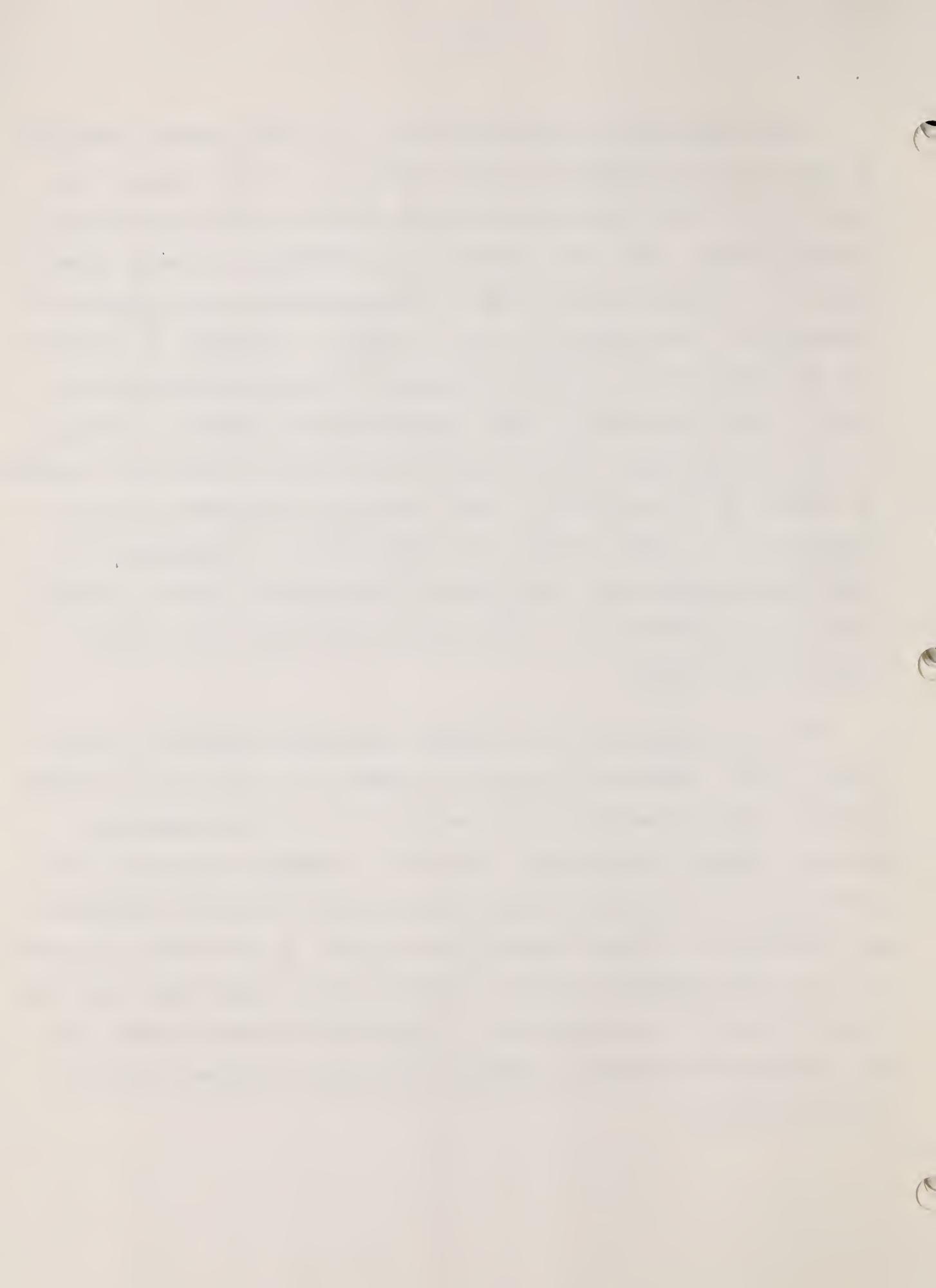
led to a series of incidents where the Jeffers would deliver uncertified cheques and the Kostiauks would attempt to return them. As soon as the Jeffers were two months in arrears, they were served with notice of eviction. These facts may suggest that the landlord may well have wanted to evict the Jeffers. The requirement of certifying cheques may well have arisen out of the antagonism of the landlord or superintendent to the tenant. However, there is no evidence that it was racially motivated. A number of other incidents fall within the same category.

On one occasion, Mr. Jeffers, who is extraordinarily muscular and powerful in appearance, arrived home by car to find that another car was parked in the spot where he customarily parked. His reaction was to park in such a manner as to block off three cars even though other parking spots were available. (Parking spots are not assigned by number but simply "adopted" by tenants as a matter of custom, even though there is a fee to cover monthly parking). Mr. Kostiauk testified that he attempted to talk to Mr. Jeffers but the latter would not answer the door. He then attempted to contact him by telephone but Mrs. Jeffers kept "hanging up the phone". He then telephoned the police who gave Mr. Jeffers a ticket. Mr. Jeffers did not pay the ticket and deducted the cost of the summons from the next month's rent. This incident was merely one battle in the "war" between landlord and tenant to which Mrs. Jeffers referred.



There were numerous confrontations. The most serious involved an assault by Mr. Jeffers upon Mrs. Kostiauk, a frail woman, who was struck in the mouth by his fist resulting in bleeding and considerable pain. She wore a brace for approximately a month afterwards. Mr. Jeffers simply denied the incident but the evidence of the Kostiauks was credible on this incident. Moreover, Mr. Jeffers was convicted of the criminal offence of "assault causing bodily harm" to Mrs. Kostiauk and that fact may be considered as evidence in these proceedings. Other incidents were also related with respect to threats by Mr. Jeffers and minor assaults committed by both of the Jeffers. In this context, the Complainant's allegation that "the superintendent has called the police and told them my husband has threatened him but the police have found this to be untrue" simply rings hollow.

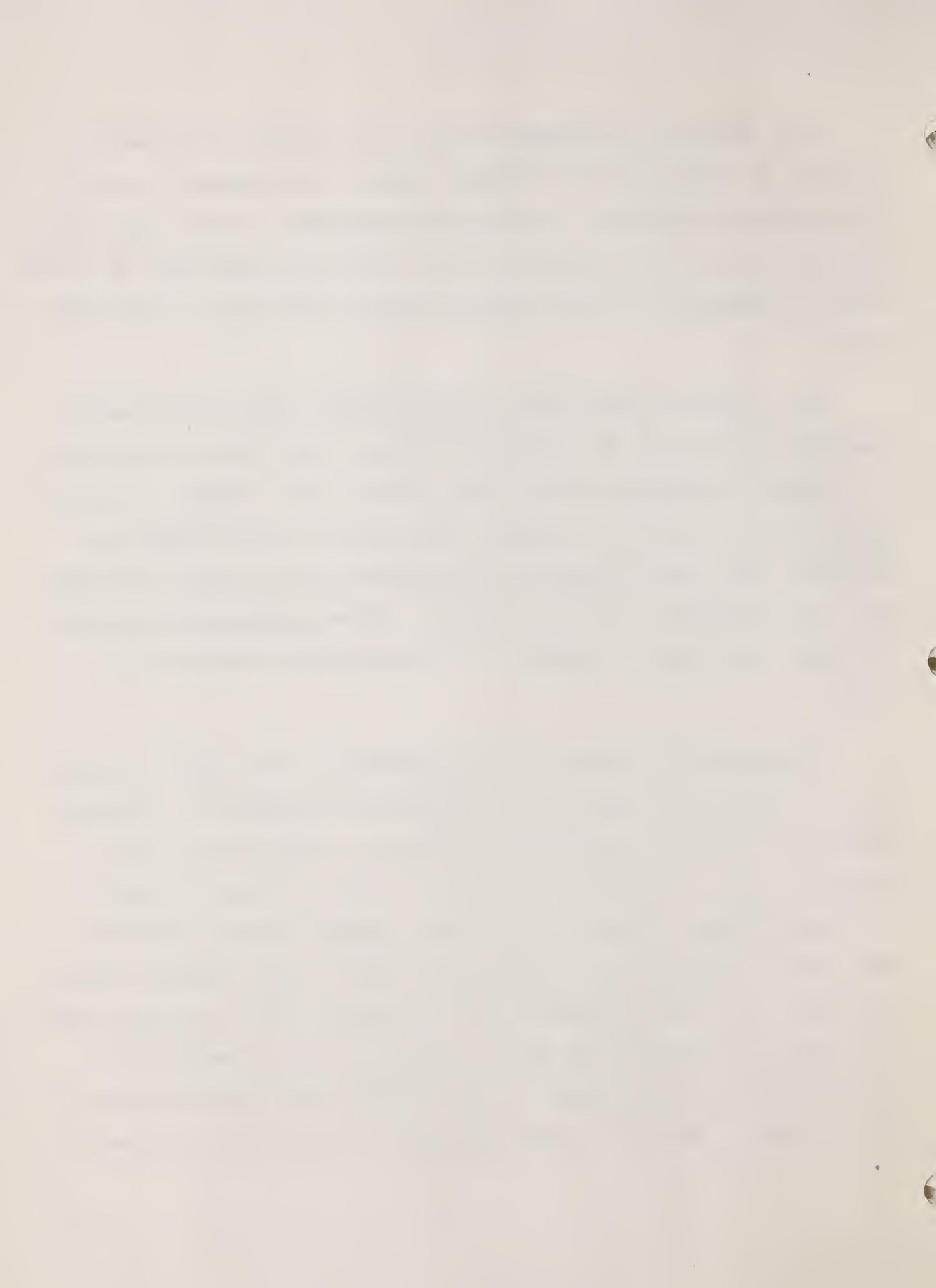
The same applies to Mrs. Jeffers' sexually suggestive allegation that Mr. Kostiauk "persists on coming to my door late at night and knocking for no good reason and seems to do this especially when my husband is not home". In fact, it appears from her cross-examination that any such visits were related to serving documents or attempting to return uncertified cheques. Mr. Kostiauk testified that he would normally attend to these matters immediately upon his return from work at 10:00 p.m.. It would be perfectly normal for Mr. Jeffers to be absent at these times since he normally worked until 2:00 a.m..



Mrs. Jeffers also suggested that Mr. Kostiauk displayed an inordinate interest in the bedroom whenever he happened to be in the Jeffers' apartment. Mr. Kostiauk responded to this suggestion by pointing out that whenever he was inside any apartment, he would take the opportunity to do a quick visual inspection of its condition.

Mrs. Jeffers stated that a former tenant named Lynda George had been harassed by Mr. Kostiauk coming to her door late at night "...because he would know that her old man wasn't home". A letter was also filed from Mrs. George, who is now living in Edmonton, alleging that the caretakers kept upsetting her and that she moved out "just because of the harassment". These allegations are vague and based entirely on hearsay. Little attention can be paid to them.

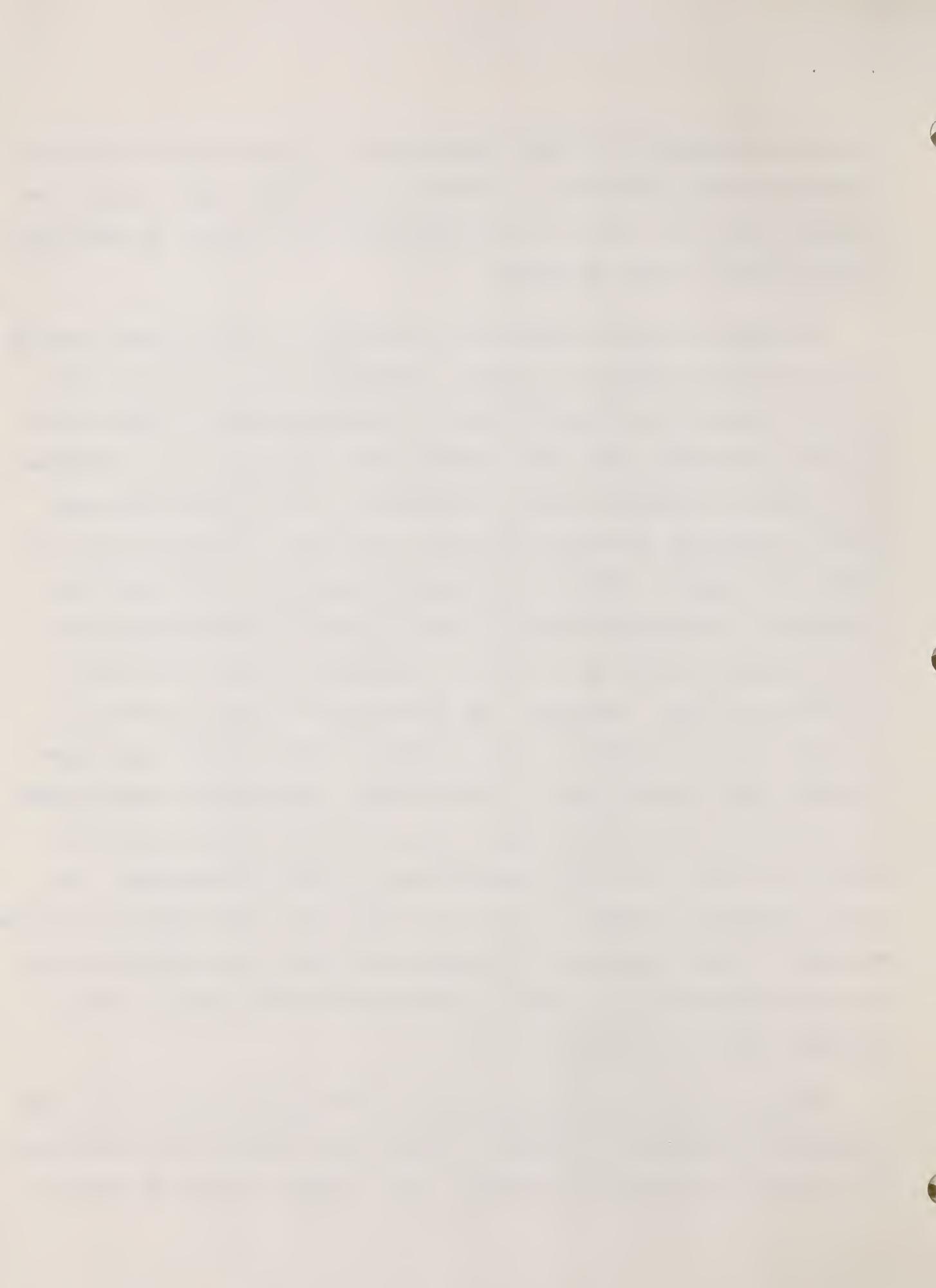
Considerable evidence was presented as to the responsiveness of Mr. Kostiauk in carrying out repairs to the Jeffers' apartment. Once more, it is not reasonably possible to conclude that Mrs. Jeffers' race or colour was the reason for the state of repairs in her apartment. First of all, Mrs. Jeffers did not object to the lack of attention to repairs under the previous superintendent. Secondly, there were examples of white tenants who had equal difficulties in having repairs done. Finally, attempts were made to effect some of the repairs, but the Jeffers were not prepared to allow them to be done in their absence. Mr. Kostiauk provided a



plausible explanation of the difficulties in arranging for tradesmen, and particularly plumbers, to attend at a specific time. Again the evidence falls far short of establishing discrimination in effecting repairs based on race or colour.

Evidence was also presented to the effect that the entire building in which the Jeffers lived was maintained in a far less satisfactory manner than other buildings. The suggestion was that their building contained more black tenants than others and this explained the inferior treatment which it received. Mr. Kostiauk was quite frank in agreeing that the building in question was not as clean as others but, again, offered a plausible explanation which was not challenged. He pointed out that the Jeffers' building contained more children so that more dirt is tracked in after the children have been playing. Moreover, the grass area was not as good and one area was not sodded in 1979, leaving a dirt section beside the building which contributed to the problem. Apparently, that problem was resolved the following year. Mr. Kostiauk testified that he made every effort to keep this building as clean as possible. In fact, the only testimony on this point came from the tenant of another building who had helped Mr. Kostiauk in his role as supervisor while Mrs. Kostiauk was away. None of the witnesses who lived in that building made any reference to it.

There were also allegations that Mr. Kostiauk and his wife had harassed the Jeffers' children. At the time, the son was nine years of age and the daughter was three. Mrs. Jeffers testified that Mr.



Kostiauk had told her son to "get off the playground" and ride his bike on the street. She apparently interpreted this to mean that her son was not permitted to play on the grass. However, Mr. Kostiauk testified that the children were riding their bicycles on the lawn and applying the brakes in order to create a skid. He claims that he merely told them to stop riding their bicycles on the lawn and to do their skids in the parking lot in order to avoid the destruction of the lawn. Most parents would not allow their children to engage in this activity on a home lawn and the request to stop was reasonable. The testimony of Mrs. Peters suggests differential treatment of black and white children in this respect but the testimony is imprecise and does not distinguish general play from bicycle riding which might well have explained any differential treatment.

In another incident, Mr. Kostiauk spoke to Mrs. Jeffers about her three-year old daughter urinating on the lawn. Mrs. Jeffers denied that her daughter had done this although it might have been a perfectly natural activity for a three year old on a warm, summer day. While Mr. Kostiauk's testimony on this matter appeared to be exaggerated, there is, again, nothing to suggest that his reaction was racially motivated. Mrs. Jeffers also testified that Mrs. Kostiauk had slapped her daughter. However, no one had witnessed this incident and Mrs. Kostiauk denied it. The sole basis for Mrs. Jeffers' belief that the incident had occurred was that her three year old daughter had approached her, crying, and said, "Mommy, super", while making a motion of slapping her face.

None of these incidents, in themselves, establish discriminatory acts on the part of Mr. Kostiauk. Taken together, they might suggest an unusual attitude towards the Jeffers, suggestive of discrimination. However, there is another, very strong explanation for the attitude of the Kostiauks towards the Jeffers and that was the hostility which arose out of the landlord and tenant relationship. Moreover, that hostility was a two-way street from the start.

The same cannot be said of another incident which involved the use of a sprinkler and hose by the children. On a hot summer day, Mr. Kostiauk set out a hose and sprinkler to allow the children to play in the spray. It was placed on one side of the street for a while and then on the other side (the side on which the Jeffers lived). While it was on the other side, the children began to spray the buildings and windows and Mr. Kostiauk removed the hose. He claimed that he soon received a phone call charging him with discriminating against the children (predominantly black) across the road. According to Mr. Kostiauk, he asked if the caller would supervise the children but the offer was declined.

A crucially different version of this incident was presented by Mrs. Phillips, who was a tenant in the building across the street from the Jeffers at the time. She indicated that the hose was available for her children but not for those across the street. The children across the street were told that they could not join in because they might break the hose. When Mrs. Phillips offered to supervise

them, Mr. Kostiauk responded with: "They're black. They live over there. Leave them there". Mrs. Phillips testified that on several occasions both Mr. and Mrs. Kostiauk told the black children that they could not play in the same area.

Mrs. Phillips was a credible and impartial witness. She was a close friend of the Kostiauks and assisted Mr. Kostiauk in carrying out his superintendent's duties during a two week period when Mrs. Kostiauk was away. She was separated from her husband and supporting herself and her child on welfare payments while a tenant. She was subsequently evicted for non-payment of rent but appeared to bear no ill-will towards Mr. Kostiauk. Her testimony is preferable to that of Mr. Kostiauk and is sufficient to establish a contravention of section 3(1)(b) of the Code - discrimination with respect to conditions of occupancy because of race and colour.

The second general allegation is that of a plan to eliminate all black tenants from the apartments. The incidents described above do not establish such a plan. Nor does Mrs. Findlayter's evidence provide the requisite proof. She testified that she was not permitted to transfer to another apartment although other tenants were permitted to do so. However, Mr. Kostiauk's treatment of Mrs. Findlayter may well have been attributable to their personal relationship rather than to racial discrimination. One incident, in particular, involved an emotional confrontation arising out of the manner in which her son had parked his car. Mr. Kostiauk provided a reasonable explanation of his conduct and was not challenged on cross-examination.

Nor was he cross-examined on the policy with respect to transferring apartments. Moreover, Mrs. Peters testified that there might have been other explanations for permitting other tenants to transfer in preference to Mrs. Findlayter. She related that an Indian person was permitted to transfer, but added: "I don't know if it was out of friendship, patronage or what...I think they have a good relationship going on; a good friendship I should say".

In attempting to establish a "plan" to eliminate blacks from the building, evidence was adduced to demonstrate that the number of black tenants had diminished significantly since Mr. Kostiauk became superintendent. The evidence presented was incomplete, vague and impressionistic. No clear picture was presented as to the initial racial composition of the apartment complex, the number of vacancies and the racial origins of the new tenants. No responsible board of inquiry could draw the inferences from the evidence as presented that there was a reduction in the number of black tenants either in actual numbers or in relation to the number applying. Nor could such evidence support the conclusion that there was a practice of not accepting new black tenants.

However, there is other evidence which is compelling in establishing an intention on the part of Mr. Kostiauk to eliminate black tenants from the complex. That evidence consists of his own statements to a number of persons.

Mrs. Phillips testified that she received instructions prior to assisting Mr. Kostiauk during the period of his wife's absence. On more than one occasion, she was instructed by Mr. Kostiauk that she was not to rent to black people. As stated previously, she was a credible witness and her testimony on this issue is preferable to the suspicious denials of Mr. Kostiauk.

Mrs. Jeffers also testified that Mr. Kostiauk told her that he intended to eliminate the black tenants. On this matter, her testimony is also more credible than his denials. It is supported by the testimony of another former tenant, Mrs. Todd. She testified that when she first moved in to the building in question, in July of 1979, Mr. Kostiauk told her that he "was trying to get all of the blacks out of the buildings". He made a similar statement to her approximately one month later.

Although Mrs. Todd was also subsequently evicted, she was a frank and forthright witness who made no attempt to exaggerate or embellish her testimony. After her testimony and after she left the hearing room, Mr. Kostiauk made a number of serious allegations as to her character. However, these were not put to her on cross-examination and for that reason, should be given limited weight in assessing her credibility.

The evidence does, therefore, disclose an expressed intention on the part of Mr. Kostiauk to eliminate black tenants and to deny occupancy to black applicants. The direct statements to Mrs. Jeffers

constitute sufficient harassment to support the earlier finding of a contravention of section 3(1)(b). However, a contravention of section 3(1)(a) requires more than an intention to deny occupancy. It requires an actual denial. If Mr. Kostiauk's instruction to Mrs. Phillips had been acted upon by her, such a denial would have been established. However, in fact, Mrs. Phillips ignored his instruction and accepted an application from a black person who subsequently became a tenant.

Was there any evidence of an actual denial, in addition to the expressed intention? In all of the circumstances, this Board concludes that the departure of the Jeffers as tenants constituted a denial of occupancy contrary to section 3(1)(a) of the Code. It is true that the Jeffers moved following receipt of a notice of eviction. However, it should be born in mind that they were always in a position to pay their rent and, in fact, had offered cheques. There is no question that the landlord and tenant antagonism, which was described earlier, was a significant factor in their decision to leave. However, Mr. Kostiauk's expression of his intention to Mrs. Jeffers must also have been a significant cause of their departure. That is sufficient to establish a contravention of the Code.

The question of an appropriate order is a difficult one. In view of the long-standing feud between the parties, it is impossible to separate the "pain and suffering" attributable to contravention of the Code from that generated by the landlord and tenant disputes

or the assaults. The criminal conduct on the part of the Jeffers is a significant consideration. In all of these circumstances, an award of damages or the requirement of an apology is not appropriate. Mr. Kostiauk is obviously in need of education as to the seriousness of his conduct but that cannot be achieved through an order of this Board. It is hoped that the fact of these proceedings will cause him to re-assess his attitudes.

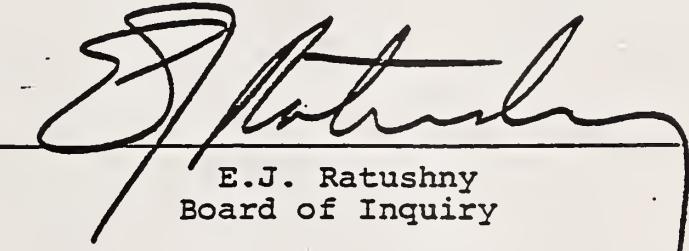
At the same time, it is important to ensure that future acts of discrimination do not occur. While there is no evidence that the officers of Greenbrook Manor Limited were privy to Mr. Kostiauk's decision to eliminate blacks, the Respondent company must assume responsibility for the acts of its agent. It must also take steps to ensure that future acts of discrimination do not occur. Fears of future discrimination were expressed by those existing tenants who testified at the hearing.

The order, pursuant to section 14 c. (b) of the Code will require the following:

- (1) That the Respondent Greenbrook Manor Limited post copies of the Ontario Human Rights Code in conspicuous places in each of the buildings constituting the apartment complex;
- (2) That the Respondent Greenbrook Manor Limited, in consultation with the Ontario Human Rights Commission, establish a system of processing rental applications which will minimize the potential for selection to be influenced by considerations of race and colour;

(3) That the Respondent Greenbrook Manor Limited provide the Ontario Human Rights Commission with sufficient access to its rental records to permit the Commission to monitor its rental practices for a period of twelve months from the date of this order.

Dated this 6th day of November, 1981.



E.J. Ratushny
Board of Inquiry

